

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT

THE SCO GROUP, INC.,)
Plaintiff/Counterclaim) CIVIL ACTION NO.
Defendant,) 2:03CV-0294 DAK
v.)
INTERNATIONAL BUSINESS)
MACHINES CORPORATION,)
Defendant/Counterclaim)
Plaintiff.)

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION

OF JEFFREY W. MOBLEY

TAKEN ON BEHALF OF THE

PLAINTIFF/COUNTERCLAIM DEFENDANT

Williamsburg, Virginia

January 24, 2006

JOB NO. 180691

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1 of what a derivative work was within the meaning of
 2 this paragraph?
 3 A. A general understanding.
 4 Q. And could you explain your general
 5 understanding to me?
 6 A. Well, it's a work that is, to some
 7 degree, based upon or including the -- you know, the
 8 base work. It's kind of hard to describe
 9 specifically, you know, what is a derivative work.
 10 Q. What was the basis for that general
 11 understanding of what the phrase derivative work meant
 12 in paragraph 2.01 to the best of your recollection?
 13 A. In the context of the particular 2.01
 14 section for use, it was an acknowledgment that
 15 enhancements needed to be made to System V to make it
 16 worthwhile for the end user, and those enhancements
 17 which were made by IBM were to belong to IBM.
 18 Q. There's also in that second sentence of
 19 paragraph 2.01 a reference to IBM's right to modify
 20 the software product.
 21 Did you have an understanding at the time
 22 of the execution and discussion of the agreement and
 23 the side letter as to whether IBM's right to modify
 24 was the same as or different from its right to create
 25 derivative works?

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1 MR. BROADWATER: Objection to the form
 2 THE WITNESS: I would think that
 3 modification and the creation of derivative work is
 4 kind of part and parcel of the same concept.
 5 BY MR. NORMAND:
 6 Q. I just need to ask whether -- can you
 7 recall drawing a distinction between those two terms
 8 or not?
 9 A. No, I can't recall that.
 10 Q. I asked you earlier about quote/unquote
 11 the resulting materials referred to in that sentence;
 12 do you see that?
 13 A. Yeah.
 14 Q. Do you have a view as you read this
 15 sentence today as to whether the resulting materials
 16 referred to in paragraph 2.01 refers to the
 17 modifications or derivative works referred to earlier
 18 in that sentence?
 19 MR. BROADWATER: Objection to the form
 20 THE WITNESS: Yeah, I think I told you
 21 before I wasn't really sure what resulting materials
 22 meant.
 23 BY MR. NORMAND:
 24 Q. I want to propose an interpretation of
 25 this sentence to you, and let me know if you disagree

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1 or agree or don't have a view one way or the other.
 2 And my question is whether the resulting
 3 materials referred to in that sentence do refer to the
 4 modifications or derivative works that IBM has the
 5 right to create under the agreement and when I ask
 6 whether you agree with that interpretation, disagree,
 7 or don't have a view?
 8 MR. BROADWATER: Objection.
 9 THE WITNESS: I don't agree.
 10 BY MR. NORMAND:
 11 Q. Okay. And can you explain to me why you
 12 don't agree?
 13 A. Because that's not what it says.
 14 Q. If not referring to the modifications or
 15 derivative works, do you have a view as to what,
 16 quote, the resulting materials, end quote, do refer
 17 to?
 18 A. I think I mentioned to you that I did
 19 not.
 20 Q. Okay. So -- but in your view you know
 21 that they don't refer to the modifications or
 22 derivative works; is that your view?
 23 A. I don't know how you can make the
 24 statement that they do. I didn't say that they don't.
 25 I don't know how you can make the statement that they

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1 do. I said I don't know what the resulting materials
 2 might be.
 3 Q. Well, and all I mean to ask is in your
 4 view you do know that they do not refer to the
 5 modifications or derivative works; is that fair to
 6 say?
 7 MR. BROADWATER: Objection to the form
 8 This is the third time. Now it has three double
 9 negatives -- or two double negatives.
 10 BY MR. NORMAND:
 11 Q. And you can answer the question if you
 12 understood it.
 13 A. I'm confused here.
 14 Q. Okay. Let me ask you if you can recall,
 15 Mr. Mobley -- I asked you before whether you can
 16 recall reading the license agreement independent of
 17 the side letter.
 18 Do you remember that series of questions
 19 and answers?
 20 A. I remember you asked.
 21 Q. Can you recall whether you thought
 22 paragraph 2.01 was ambiguous?
 23 A. I can't recall what I read 20 years ago.
 24 Q. Can you recall whether you thought any
 25 part of the software agreement itself was ambiguous?

14 (Pages 50 to 53)